

Senate Bill No. 1796

Passed the Senate August 31, 2006

Secretary of the Senate

Passed the Assembly August 30, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 11564 of the Government Code, and to amend Sections 8521, 8550, 8551, 8552, 8554, 8575, and 8590 of, to amend the heading of Part 4 (commencing with Section 8520) of Division 5 of, to add Sections 8522.3, 8522.5, 8523, 8577, 8578, and 8610.5 to, to add Article 8 (commencing with Section 8725) to Chapter 3 of Part 4 of Division 5 of, and to repeal and add Article 2 (commencing with Section 8580) to Chapter 2 of Part 4 of Division 5 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1796, Florez. Flood protection.

(1) Existing law establishes the 7-member Reclamation Board in the Department of Water Resources. Existing law requires the board members to be appointed and to serve at the pleasure of the Governor. Existing law prescribes compensation for each board member for time spent attending meetings of the board in the amount of \$100, except as specified. Existing law requires the board to elect one of its members as president. Existing law requires the board to appoint a secretary, who may be a board member, and authorizes the board to appoint a general manager, a chief engineer, and an assistant secretary. Existing law authorizes the board to employ certain other employees.

This bill would rename the Reclamation Board the Central Valley Flood Protection Board. The bill would require the board to act independently of the department. The bill would prohibit the department from overturning any action or decision by the board.

The bill would require the board to consist of 9 members. The bill would require 7 members to be appointed by the Governor, subject to Senate confirmation, 4 of whom would be required to meet specified eligibility requirements and 3 of whom would be designated as public members. The bill would require one board member to be appointed by the Senate Rules Committee and one board member to be appointed by the Speaker of the Assembly and would designate those 2 members as public members. The

bill, with a certain exception, would require the board members to serve 4-year terms. The bill would require the board members to receive a salary identical to that received by members of the State Air Resources Board. The bill would require the Governor to select one of the board members as president.

The bill would repeal provisions relating to the appointment or employment of specified personnel and, instead, authorize the board to appoint an executive officer and chief engineer and to employ legal counsel and other necessary staff.

(2) Existing law provides that a member of the board having an interest in lands within the drainage district is not disqualified from voting to execute any part of the plans of flood control or from carrying out the objects of the board.

This bill would instead require that a member of the board comply with specified conflict of interest requirements when voting to carry out any part of a plan of flood control and when carrying out the objects of certain provisions of law relating to the board. The bill would subject the board members to specified requirements relating to conflict of interest and ex parte communications.

(3) Existing law authorizes the board to engage in various flood control activities along the Sacramento River, San Joaquin River, their tributaries, and related areas.

This bill would prohibit a board member from advocating to a federal agency on behalf of a project that has been or is reasonably anticipated to be submitted to the board for review unless the board authorizes that action in accordance with specified requirements. The bill would require the board to adopt regulations relating to evidentiary hearings and to hold evidentiary hearings to determine any matter that requires the issuance of a permit. The bill would require the board to take action only after allowing public comment and to consider, as applicable, specified matters for the purpose of taking that action in any evidentiary hearing. The bill would authorize the board to collaborate with state and federal agencies, if appropriate, regarding certain multiobjective flood management strategies.

The bill would require the department to prepare a preliminary report, by December 31, 2008, on the status of the State Plan of Flood Control and to submit the report to the board. The bill would require the department to inspect the project levees, as

defined, and to include certain components in the preliminary report. The bill would require the board, by December 31, 2009, to adopt and submit to the Governor and the Legislature a final report in accordance with prescribed procedures.

The bill would require the board, on or before December 31, 2009, to prepare and adopt a strategic flood protection plan. The bill would require the board to establish and update, every 5 years, standards for levee construction, operation, and maintenance. The bill would require the board to review local and regional land use plans to ensure their compliance with flood protection and public safety standards adopted by the board. The bill would require the board to review, and authorize the board to make recommendations regarding, flood control plans adopted by local public agencies. The bill would prohibit the board from allocating any funds to a local public agency for a flood control project unless the board determines that project ensures adequate flood protection consistent with existing law.

The bill would establish procedures for the decertification of locally maintained flood control facilities as a part of the State Plan of Flood Control.

The people of the State of California do enact as follows:

SECTION 1. Section 11564 of the Government Code is amended to read:

11564. (a) Effective January 1, 1988, an annual salary of twenty-five thousand one hundred eighteen dollars (\$25,118) shall be paid to each member of the State Air Resources Board and the Central Valley Flood Protection Board, if each member devotes a minimum of 60 hours per month to state board work. The salary shall be reduced proportionately if less than 60 hours per month is devoted to state board work.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 2. The heading of Part 4 (commencing with Section 8520) of Division 5 of the Water Code is amended to read:

PART 4. THE CENTRAL VALLEY FLOOD PROTECTION
BOARD

SEC. 3. Section 8521 of the Water Code is amended to read:

8521. “Board” means the Central Valley Flood Protection Board. Any reference to the Reclamation Board in this or any other code means the Central Valley Flood Protection Board.

SEC. 4. Section 8522.3 is added to the Water Code, to read:

8522.3. “Facilities of the State Plan of Flood Control” means the levees, weirs, channels, and other features of the State Plan of Flood Control.

SEC. 5. Section 8522.5 is added to the Water Code, to read:

8522.5. “Project levee” means any levee that is a part of the facilities of the State Plan of Flood Control.

SEC. 6. Section 8523 is added to the Water Code, to read:

8523. “State Plan of Flood Control” means the state and federal flood control works, lands, programs, plans, policies, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 for which the board or the department has provided the assurances of nonfederal cooperation to the United States, and those facilities identified in Section 8361.

SEC. 7. Section 8550 of the Water Code is amended to read:

8550. (a) The board is continued in existence and shall continue to exercise and have all of its powers, duties, purposes, responsibilities, and jurisdiction.

(b) Notwithstanding any other provision of law, the board shall act independently of the department. The department shall not overturn any action or decision by the board.

SEC. 8. Section 8551 of the Water Code is amended to read:

8551. (a) Except as provided in subdivision (g), the board consists of nine members who shall be appointed in accordance with this section.

(b) (1) Seven members of the board shall be appointed by the Governor, subject to Senate confirmation.

(2) Of the members appointed pursuant to paragraph (1), the following requirements apply:

(A) One person shall be an engineer.

(B) One person shall have training, experience, and expertise in geology or hydrology.

(C) One person shall be a flood control expert with not less than five years' experience.

(D) One person shall be an attorney with water experience.

(E) Three persons shall be public members.

(c) One member of the board shall be appointed by the Senate Rules Committee.

(d) One member of the board shall be appointed by the Speaker of the Assembly.

(e) The members appointed pursuant to subdivisions (c) and (d) shall be public members.

(f) (1) Except as provided in paragraph (2), the board members appointed pursuant to subdivision (b), (c), or (d) shall serve four-year terms.

(2) The board members initially appointed pursuant to this section shall determine, by lot, that five members shall serve four-year terms and four members shall serve two-year terms.

(g) Each board member holding office on December 31, 2006, shall continue to serve until his or her successor is appointed and has been qualified to hold office. The order of replacement shall be determined by lot.

SEC. 9. Section 8552 of the Water Code is amended to read:

8552. (a) Each member of the board shall receive the necessary expenses incurred by the member in the performance of official duties.

(b) Any member of the board traveling outside the state pursuant to authorization of the board, and the approval of the Governor and Director of Finance as provided by Section 11032 of the Government Code, while so engaged shall receive per diem and his or her necessary expenses.

(c) Each member of the board shall receive the salary provided for in Section 11564 of the Government Code.

SEC. 10. Section 8554 of the Water Code is amended to read:

8554. The Governor shall select one of the members of the board as president.

SEC. 11. Section 8575 of the Water Code is amended to read:

8575. A member of the board shall comply with the conflict of interest requirements of Section 87100 of the Government

Code when voting to carry out any part of a plan of flood control and when carrying out the objects of this part.

SEC. 12. Section 8577 is added to the Water Code, to read:

8577. (a) No board member shall participate in any board action or attempt to influence any decision or recommendation by any employee of, or consultant to, the board that involves himself or herself or that involves any entity with which the member is connected as a director, officer, consultant, or full- or part-time employee, or in which the member has a direct personal financial interest within the meaning of Section 87100 of the Government Code.

(b) No board member shall participate in any proceeding before any agency as a consultant or in any other capacity on behalf of any person that actively participates in matters before the board.

(c) For a period of 12 months after leaving office, a former board member shall not act as agent or attorney for, or otherwise represent, any other person before the board by making any formal or informal appearance or by making any oral or written communication to the board.

(d) No board member may advocate to the United States Army Corps of Engineers or other federal agency on behalf of any project that has been or is reasonably anticipated to be submitted to the board for review, unless the board authorizes that action in accordance with Section 8560.

SEC. 13. Section 8578 is added to the Water Code, to read:

8578. (a) For the purposes of this section, “ex parte communication” means any oral or written communication concerning matters, other than purely procedural matters, under the board’s jurisdiction that are subject to a vote.

(b) (1) No board member or any person, excluding a staff member of the board acting in his or her official capacity, who intends to influence the decision of a board member on a matter before the board, shall conduct an ex parte communication.

(2) If an ex parte communication occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board’s record.

(3) Communications cease to be ex parte communications when the board member or the person who engaged in the communication with the board member fully discloses the

communication and requests in writing that it be placed in the board's official record of the proceeding.

(c) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board to which this section applies.

SEC. 14. Article 2 (commencing with Section 8580) of Chapter 2 of Part 4 of Division 5 of the Water Code is repealed.

SEC. 15. Article 2 (commencing with Section 8580) is added to Chapter 2 of Part 4 of Division 5 of the Water Code, to read:

Article 2. Employees

8580. (a) The board may appoint an executive officer.

(b) The board may appoint a chief engineer.

(c) The board may employ legal counsel and other necessary staff.

SEC. 16. Section 8590 of the Water Code is amended to read:

8590. To carry out the primary state interest described in Section 8532, the board may do any of the following:

(a) Acquire either within or outside the boundaries of the drainage district, by purchase, condemnation or by other lawful means in the name of the drainage district, all lands, rights-of-way, easements, property or material necessary or requisite for the purpose of bypasses, weirs, cuts, canals, sumps, levees, overflow channels and basins, reservoirs and other flood control works, and other necessary purposes, including drainage purposes.

(b) Construct, clear, and maintain bypasses, levees, canals, sumps, overflow channels and basins, reservoirs and other flood control works.

(c) Construct, maintain, and operate ditches, canals, pumping plants, and other drainage works.

(d) Make contracts in the name of the drainage district to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this division, or arising out of the use, taking, or damage of any property for any of the purposes of this division.

(e) Collaborate with state and federal agencies, if appropriate, regarding multiobjective flood management strategies that incorporate agricultural conservation, ecosystem protection and restoration, or recreational components.

SEC. 17. Section 8610.5 is added to the Water Code, to read:

8610.5. (a) (1) The board shall adopt regulations relating to evidentiary hearings pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The board shall hold an evidentiary hearing for any matter that requires the issuance of a permit.

(3) The board is not required to hold an evidentiary hearing before making a decision relating to general flood protection policy or planning.

(b) The board may take an action pursuant to Section 8560 only after allowing for public comment.

(c) The board shall, in any evidentiary hearing, consider all of the following, as applicable, for the purpose of taking any action pursuant to Section 8560:

(1) Evidence that the board admits into its record from any party, state or local public agency, or nongovernmental organization with expertise in flood or floodplain management.

(2) The best available science that relates to the scientific issues presented by the executive officer, legal counsel, the department, or other parties that raise credible scientific issues.

(3) Effects of the proposed decision on the entire State Plan of Flood Control.

(4) Effects of reasonably projected future events, including but not limited to, changes in hydrology, climate, and development within the applicable watershed.

SEC. 18. Article 8 (commencing with Section 8725) is added to Chapter 3 of Part 4 of Division 5 of the Water Code, to read:

Article 8. State Plan of Flood Control

8725. (a) On or before December 31, 2008, the department shall prepare a preliminary report on the status of the State Plan of Flood Control and submit the preliminary report to the board for its adoption in accordance with this section.

(b) On or before December 31, 2007, the department shall provide a report to the Governor and Legislature on its progress toward meeting the requirements of subdivision (a).

(c) For the purposes of preparing the preliminary report, the department shall inspect the project levees. The preliminary report shall include all of the following:

(1) A description and the location of all facilities of the State Plan of Flood Control, including, but not limited to, levees, canals, weirs, bypasses, and pumps. The description shall include the identification of the agency responsible for maintaining the facility.

(2) An evaluation of the performance and deficiencies of project levees and other facilities of the State Plan of Flood Control.

(3) A prioritized list of actions necessary to improve the performance of, and to the maximum extent practicable, to eliminate deficiencies of, project levees and other facilities of the State Plan of Flood Control, using the following criteria for establishing its priority list:

(A) The likelihood of failure by the levee or facility.

(B) The current population protected by the levee or facility.

(C) The public safety infrastructure protected by the levee or facility. For purposes of this subparagraph, “public safety infrastructure” means the street and highway evacuation routes, hospitals, and other public safety infrastructure necessary to respond to a flood emergency.

(4) An examination of both structural and nonstructural methods for improving the performance and eliminating deficiencies of project levees and other facilities of the State Plan of Flood Control, and, wherever feasible, a description of actions intended to meet multiple objectives, including each of the following:

(A) Reducing the risk to human life, health, and safety from flooding.

(B) Promoting natural dynamic hydrologic and geomorphic processes.

(C) Reducing damages from flooding.

(D) Increasing and improving the quantity, diversity, and connectivity of riparian, wetland, floodplain, and shaded riverine

aquatic habitats, including agriculture and the ecological values of these lands.

(E) Minimizing the flood management system operation and maintenance requirements.

(F) Promoting the recovery and stability of native species populations and overall biotic community diversity.

(5) A description of the historical development of the State Plan of Flood Control.

(6) A description of the roles and responsibilities of federal, state, and local agencies.

(7) A description of all other relevant projects, programs, activities and policies that are a material component of the State Plan of Flood Control.

(8) An examination to determine if the listing of facilities in Section 8361 is properly inclusive or if additions or deletions are appropriate, together with any revisions of roles and responsibilities.

(9) An examination to determine which additional existing flood control facilities, if any, should be added to the State Plan of Flood Control. In determining whether a facility should be added to the State Plan of Flood Control, the department and the board shall consider the following:

(A) Whether the facility operates in coordination with other facilities of the State Plan of Flood Control.

(B) Whether the facility protects any contiguous area with more than 10,000 residents.

(C) Whether the facility protects public safety infrastructure as defined in subparagraph (C) of paragraph (3) of subdivision (c).

(d) On or before December 31, 2009, the board shall adopt and submit to the Governor and the Legislature a final report that includes any changes that it determines to be necessary based on the public comments received pursuant to subdivision (e).

(e) (1) The board shall conduct at least two public meetings to consider public comments prior to adopting the report. At least one meeting shall be conducted at a location in the Sacramento Valley and at least one meeting shall be conducted at a location in the San Joaquin Valley or the Sacramento-San Joaquin Delta as described in Section 12220.

(2) The board shall publish the department's preliminary report prepared pursuant to subdivision (a) on its Internet Web

site at least 30 days before the date of the first public meeting required by paragraph (1).

(3) To the extent feasible, the board shall provide outreach to disadvantaged communities to promote access and participation in the meetings.

(f) The department shall assist the board in developing the necessary information that responds to public comments for inclusion in the final report.

(g) It is the intent of the Legislature that the report to the Governor and Legislature on the status of the state flood control system become the basis for developing and implementing one or more natural communities conservation plans or joint natural communities conservation plan/habitat conservation plans for flood management projects.

8726. (a) On or before December 31, 2009, the board shall prepare and adopt a strategic flood protection plan, consistent with Section 8725. The board shall make relevant maps available to the public and shall post these maps on its Internet Web site.

(b) The board shall establish and update, at a minimum, every five years, standards for levee construction, operation, and maintenance.

(c) The board shall review and comment on local and regional land use plans regarding their compliance with flood protection and public safety standards adopted by the board.

(d) The board shall review flood control plans adopted by local public agencies regarding the adequacy of those plans to protect public safety. The board may recommend revisions to those plans to improve public safety protection.

(e) The board shall not allocate any funds to a local public agency for a flood control project unless the board determines that the project ensures adequate flood protection consistent with existing state and federal law.

8727. (a) (1) A local agency that is responsible for maintaining a unit or portion of the State Plan of Flood Control, at a public hearing of the local agency, upon approval of the board, may submit a petition to the board and the United States for decertification of the flood control facility as a part of the State Plan of Flood Control.

(2) Not less than 90 days before the proposed submittal of the petition, the local agency shall provide notice to the department,

the board, any affected county, any affected city, and any affected levee district. The notice shall specify the reasons for the proposed decertification and the local agency's plan for the levee if the decertification is approved.

(3) The board may approve the submittal of the petition at a public hearing if the county board of supervisors of any county, and the city council of any city that receives protection from the levee provides written approval for the submittal of the petition.

(b) The board may approve a petition for decertification submitted in accordance with subdivision (a) if it determines that other levees will not be adversely affected and that other elements of the State Plan of Flood Control will not be adversely affected, and that it is in the best interest of the state.

(c) The decertification shall be effective upon the approval of the decertification by the board and the United States.

Approved _____, 2006

Governor